

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BOBBY WELLS,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT  
OF CORRECTIONS, ELENOR VERNELL,  
MIKE ALBERT, LT. BOBBY GREENE,

Defendants.

No. C13-234 RJB/KLS

ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL

Before the Court is Plaintiff's motion for the appointment of counsel. ECF No. 20. Having carefully reviewed Plaintiff's motion and balance of the record, the Court finds, for the reasons stated below, that Plaintiff's motion should be denied.

**DISCUSSION**

No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is discretionary, not mandatory.”) However, in “exceptional circumstances,” a district court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional circumstances exist, the court must evaluate both “the likelihood of success on the merits [and]

1 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal  
2 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting  
3 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he  
4 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to  
5 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d  
6 1101, 1103 (9<sup>th</sup> Cir. 2004).

7  
8 That a *pro se* litigant may be better served with the assistance of counsel is not the test.  
9 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the issues  
10 involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of further  
11 facts during litigation. But, if all that was required to establish the complexity of the relevant  
12 issues was a demonstration of the need for development of further facts, then practically all cases  
13 would involve complex legal issues. *Id.*

14  
15 Plaintiff states that he requires the appointment of counsel because he is indigent and  
16 cannot afford counsel, that his imprisonment greatly limits his ability to litigate, the issues in the  
17 case are complex and he has limited access to a law library and limited knowledge of the law.  
18 He also states that counsel would be better able to present evidence, gather discovery, and cross-  
19 examine witnesses. ECF No. 20. These are not exceptional circumstances in this case. Plaintiff  
20 filed his complaint *pro se* and has demonstrated an adequate ability to articulate his claims *pro*  
21 *se*. This case is not legally or factually complex. While Plaintiff may not have vast resources or  
22 legal training, he meets the threshold for a *pro se* litigant. Concerns regarding investigation and  
23 discovery are also not exceptional factors, but are the type of difficulties encountered by many  
24 *pro se* litigants. There are also numerous avenues of discovery available to the parties through  
25  
26

1 the Federal Rules of Civil Procedure during the litigation process. In addition, Plaintiff has not  
2 shown a likelihood of success on the merits.

3 Accordingly, Plaintiff's motion for the appointment of counsel (ECF No. 20) is  
4 **DENIED**. The Clerk is directed to send copies of this Order to Plaintiff.

5  
6 **DATED** this 5<sup>th</sup> day of August, 2013.  
7

8  
9  
10 

11 Karen L. Strombom  
12 United States Magistrate Judge  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26